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## THE IMPLEMENTATION OF ARTICLE 127 OF LAW OF INDONESIA REPUBLIC NUMBER 35 2009 FOR JUDGE'S SENTENCE ABOUT REHABILITATION FOR DRUG ABUSE CRIME

Meiriantony

Advocate & Legal Consultant (Sultan Haji Street No 5, Labuhan Ratu, Bandar Lampung )

### ABSTRACT

*The national police, as well as being the stronghold of law enforcement, has such a duty of protection of human rights. The problem is precisely the police in carrying out law enforcement more violates Human Rights, both administrative and procedural violations, and violations of physical/violence. It occurs in the case of the light up to the case that the heavy procedural infringement. The violation of human rights by police as if become habit. Therefore, reinterpret human rights and human rights violations are understood by Police, is an attempt to answer the problem. Prevention of human rights violations requires such a cognitive approach. Placing mindset (thought) in the cognitive structure of apparatus as subject to change. The understanding of the criminal law and human rights instruments as knowledge and new awareness. Starting from the mental activity of apparatus for directing and controlling the mind for all the good things and open to do as well as close the negative things and not commendable. The police who realized that they have evidence of the important position that are empowered to enforce the law will give justice to man with wisdom and tact.*

*Key Words : Violation, The Rights of Suspects, Law Enforcement*

### 1. Introduction

Along with the development of safe and secure problems of abuse and illicit traffic Narcotics is a problem that many faced by nations in the world , including Indonesia. National Narcotics Agency in 2011 said that abuse of narcotics reached 2.2% of the total population of Indonesia. The problems are increasingly widespread and complex , as quoted from Article 5 paragraph (1) and Article 20 of the 1945 Constitution of the Republic of Indonesia and Law Number 35 Year 2009 regarding Narcotics. D nature of Law No. 35 of 2009 on Narcotics that legalized on 12 October 2009 is more humane to the victims of drug abuse, but tougher on dealers, importers and producers of narcotics.

According to Bambang Purnomo that the correctional system not result in the type of criminal imprisonment into correctional replaced, but should be a right criminal executor.

<sup>1</sup>While Muladi divides the theories about the aims of servant into three groups, namely:

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<sup>1</sup>Bambang, Soepomo, *Politik Hukum Kriminal*, (Jakarta, Rineke Cipta, 2008)

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\*Corresponding author.

E-mail address: [ujang\\_7171@yahoo.com](mailto:ujang_7171@yahoo.com)

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Absolute theory (retributive ), Through Home Visits teleological and Teleological restitive theory.<sup>2</sup>

Peter L. Berger and Thomas Luckman examine through the sociology of knowledge that tries to pursue the analysis of reality formation by people as a social construction of reality. Reality is defined as a quality contained in a phenomenon that is acknowledged as having existence independent of our own will, whereas knowledge is defined as a certainty that phenomenons are real and have specific characteristics.<sup>3</sup>

Efforts to overcome drug abuse can be done through several ways, including the following: First, preventive ,to establish a society that has resistance and immunity to narcotics, the Police has done various ways, among others, through prevention efforts, better prevention efforts than the eradication. Second, epressive (action) Police law enforcement officers or BNN disregard and combat drug abuse through legal channels, perpetrated by BNN law enforcement or security apparatus assisted by the community. Third, Curative (treatment). Police and BNN's efforts to carry out its duties and authority in eradicating narcotics in cooperation with 25 related agencies are aimed at healing the victims both medically and with other media. Fourth, rehabilitative (rehabilitation), the rehabilitation effort is done by BNN law enforcement officers so that after the treatment is finished the victim does not secure "addicted" Narcotics. Rehabilitation seeks to sympathize and treat the narcotics victims fairly in order to return to society in a healthy, physical and spiritual state. Society should not alienate the victims of conscious and repentant narcotics, so that they do not fall back into drugs as a drug addict.<sup>4</sup>

## 2. Materials and Methods

This research used empirical jurisdiction approach by making inventories of positive laws regulating and related to law applications and the inhibiting factors for the applications. This was a descriptive research to describe in detail, systematically, and comprehensively about facts related to law applications, and then these were analyzed for law aspects related to law sentence. Data were obtained from Tanjung Karang State Court.

## 3. Result and Discussions

### 3.1 Implementation of Article 127 Paragraph (1) Letter a of RI Law no.35 Year 2009 on Narcotics Against Decision Number: 133 / PID / a / 2013 / PN.TK.

Article 127 Paragraph (1) Letter A of the Law of the Republic of Indonesia Number 35 Year 2009 on Narcotics. In Article 127 Paragraph (1) Sub-Paragraph a of Law Number 35 Year 2009 on Narcotics, it is mentioned:

#### 1. Any abuse:

- a. Narcotics Group I for myself shall be punished with imprisonment for a maximum of 4 (four) years;
- b. Narcotics Group II for yourself shall be sentenced to 2 (two) years imprisonment of criminal jail; and
- c. Narcotics Group III for myself shall be sentenced to imprisonment for a maximum of 1 (one) year.

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<sup>2</sup>Muladi, *Institusi Kriminal*, (Bandung,Alumni ,2010)

<sup>3</sup>Peter Berger, *Tafsiran Sosial Atas Kenyataan Risalah Tentang Sosiologi Pengetahuan*(Jakarta, LP3ES,1990)

<sup>4</sup>Handri, *RaharjoHukum Perusahaan di Indonesia* , (Yogyakarta,Pustaka Yustisia, 2009)

2. In the case of any misuse as to which number 1 can be proven / proven as a victim of Narcotics abuse, such abuser shall undergo medical rehabilitation and social rehabilitation.

#### Legal Creation

The law is not a concept in society because the law grows naturally in societies where law is always changing with social change. The main points of the historical school of teaching which Savigny's describes and some of his followers are as follows:

- (1) The law found was not created. Legal growth is essentially an unconscious and organic process; therefore legislation is less important than customs;
- (2) Because the law evolved from easily understood legal relations in primitive societies to more complex laws in modern civilization the general consciousness can not be more self-assertive, but presented by the jurists who formulate legal principles technically.
- (3) The law can not apply or be universally applied. Every society develops its own habits because it has a distinctive language of customs and constitutions.

#### b) Primary Functions of Law

The concept of the soul of society in Savigny's theory of this law can not clearly indicate how the content and its scope. In the end it is very difficult to see the function and its development as the main source of law according to this theory.

The law created by the ruler has a goal to be achieved. To explain this goal there are 3 (three) theories that explain the purpose of law, namely:

- (1) Ethical Theory: The legal purpose of achieving justice;
- (2) Utility Theory: The purpose of the law to achieve human happiness;
- (3) Mixed Theory: The legal objective of achieving order (primary) and justice of differing content and size according to society and times;
- (4) While the legal objective of the Republic of Indonesia according to positive law is contained in the Fourth Paragraph of the 1945 Constitution.

The purpose of the law is essentially wanting a balance of interests, justice, order, peace and happiness of every human being, from which it can be known what is actually the function of the law it self.

### **3.2. .Analysis of Decision Number 133 / Pid / A / 2013 / PN.TK.**

The theory expressed by Rahardjo, That there is a conflict / disintegration of the legal values because each has different demands so that the judgment of the legal community also vary. <sup>5</sup>The Basic Consideration of the Assembly of Human Rights is based on the sentence, " For The Sake of Justice Under The One Almighty God."

Based on the considerations that are broken down in the ruling there is a consideration that because the defendant has been found guilty of committing non-criminal, based on Article 193 of the Criminal Procedure Code, the defendant must be sentenced.

Article 193 of KUHAP;

- (1) If the court is of the opinion that the defendant is guilty of a non-criminal charged to him, the court shall be subject to a criminal offense

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<sup>5</sup>Satjipto,Rahardjo, *Ilmu Hukum* , (Jakarta, Citra Aditya Bakti, 1991)

- (2) The court in the judgment, if the suspect is not detained, may order the defendant to be detained, may order that the accused be detained, if fulfilled under Article 21 and there is sufficient grounds for that.

Based on the statements of witnesses and facts revealed in the trial of the Panel of Judges, the defendant agrees to be in violation of Article 127 Paragraph (1) Sub-Paragraph a of Law Number 35 Year 2009 concerning Narcotics Article 55 Paragraph (1) to 1 of the Criminal Code, 3 of 1997 on Juvenile Justice and other legal regulations relating to this case.

### **Judge**

- 1) Stating the defendant ahmad kharima nihan romasil bin. Johan pollute currently confirmed confirmed to infringe under no right to use the drinking narcotics i in the form of plants;
- 2) Criminalize the defendant therefore, with imprisonment for 4 (four) months 20 (twenty) days;
- 3) Determining the period of arrest that has been under Accused is reduced entirely from imprisonment imposed;
- 4) Ordered the Defendant to remain on Hold;
- 5) Prepare evidence seized by the State
- 6) Charged to the Defendant to pay the cost of the case sebe sar Rp, 2000, - (two thousand rupiah).<sup>6</sup>

The decision of the judge to decide the defendant was proven violating Article 127 (1) Letter of Law RI Number 352009 aboutnarcotics but the judges do not implement the contents of the article, it can be approve court case No. 133 / Pid / A / 2013 / PN.TK The panel of judges is based on the conviction of the Panel of Judges as the basis of consideration in deciding this case, in the judgments The Panel of Judges is as follows:

1. Considering whereas in the General Prosecutor's claim No.Rg.Perk.PDM-60 / TJKAR / 02/2013 dated March 18, 2013.
2. Considering, upon the Public Prosecution's request by his Legal Counsel to file a written / pledoi defense before the court and the public prosecutor in an oral reply to the defense / reply before the trial shall remain in its claim.
3. based on the prosecution's indictment dated February 12, 2013 No.Reg.Perk.PDM-60 / TJKR / 02/2013.
4. Considering the Public Prosecutor filed evidence of examination of UPT Test of National Narcotics Test. 139A / I / 2013 / UPT LAB TEST OF NARCOTICS dated January 14, 2013.
5. Considering in addition to presenting witnesses in giving statements under oath and legal facts and evidences revealed in court in the Court.
6. Considering in the fact of the trial the act has met the elements in committing criminal acts as the element of abuse for class I for self-narcotics has been fulfilled.
7. Considering that based on this consideration, the Panel of Judges is of the opinion that the third element of "Conduct has done" has been fulfilled.

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<sup>6</sup>Abintoro, Prakoso,*Pembaruan Sistem Peradilan Pidana Anak*,(Yogyakarta, Laksbang Grafika, 2013)

8. Consideration in the decision of the Panel of Judges is contradictory to the Progressive Law Perspective, should the basis of consideration of the Panel of Judges prioritize the interests of the defendant.

According to Soetandyo W, community participation can not be accomplished without transparency. Accountability is difficult to implement without monitoring and public participation in law enforcement processes. Unclear and not transparanan in the process of law enforcement, making the community always overwhelmed by various questions, whether it is true that the interests of society is always prioritized. For this reason the capacity of the community must be strengthened (empowering), public confidence must increase, and the opportunity for the community to participate is improved.<sup>7</sup>

Satjipto explained that the demands are coming from the public or legal service users and require a settlement or selection of settlement methods from alternative solutions. The selection will be based on the influence of orientation factors, views, feelings, attitudes and behavior of a person in society against the law. These factors are based on the magnitude of influences of interests, ideas, attitudes, wishes, expectations, and opinions of people about the law. If he chooses a court, it is because the person has a positive perception of the court and is influenced by the driving factors.<sup>8</sup>

#### 4. Conclusions

The Judgment of the District Court of Class IA Tanjung Karang against the narcotics victims who violated Article 127 of RI Law Number 35 Year 2009 on Narcotics for minors no convicted action was returned to the parents or terminated criminally but remained rehabilitated medically and socially as a criminal penalty.

Decision to rehabilitate for narcotics victim as the sound in Article 127 of RI Law Number 35 Year 2009 concerning Narcotics, whether to minors or under age by District Court Judge of Class IA Tanjung Karang is decided through the decision of Penitentiary Custody as Article 10 of the Criminal Code , which is more violent and preferably a deterrent effect.

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<sup>7</sup>Soetandyo Wignyosoebroto, *Hukum dan Moral Pemerintahan yang Baik*, (Jurnal Analisa Hukum 2002)

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